

NOTICE OF INTENTION TO ADOPT REGULATIONS
SAN BERNARDINO COUNTY
AGRICULTURAL COMMISSIONER REGULATIONS
Subject: Protection of School Sites from Pesticide Applications
Agricultural Pesticide Application Limitations

The San Bernardino County Agricultural Commissioner (CAC) proposes to adopt commissioner regulations. The pesticide regulatory program activities that will be affected by the proposal are those pertaining to timing, notification and the method of application for pesticides applied at agricultural sites adjacent to schools. In summary, the proposed action would require for commercial agricultural sites adjacent to schools:

1. Advance notification of the application of non-restricted pesticides.
2. Prohibit aerial application of pesticides.
3. Restrict the times certain types of pesticide application methods could be used.
4. Restrict the time when certain pesticides could be used based on their toxicity.

SUBMITTAL OF COMMENTS

Any interested person may present comments in writing about the proposed action to the contact person named below. Written comments must be received no later than 5:00 p.m. on September 17, 2008. Comments regarding this proposed action may also be transmitted via e- mail at awm@awm.sbcounty.gov or by facsimile (FAX) at (909) 387-2449.

A public hearing is not scheduled. However, a public hearing will be scheduled if any interested person submits a written request for a public hearing to the San Bernardino CAC'S Office no later than 15 days prior to the close of the written comment period.

EFFECT ON SMALL BUSINESS

The San Bernardino CAC has determined that the proposed regulatory action does not affect small businesses. The impact from these proposed regulations is expected to be minimal because agricultural operations are still allowed to occur and should not be delayed by more than 24 hours. The additional regulatory burden of filing a notice of the intent to apply pesticides at the affected sites is also expected to have a minimal effect on small businesses.

INFORMATIVE SUMMARY

The San Bernardino County Agricultural Commissioner (CAC) proposes to adopt commissioner regulations. The pesticide regulatory program activities that will be affected by the proposal are those pertaining to timing, notification and the method of application for pesticides applied at agricultural sites adjacent to schools. In summary, the proposed action would require for commercial agricultural sites adjacent to schools:

5. Advance notification of the application of non-restricted pesticides.
6. Prohibit aerial application of pesticides.
7. Restrict the times certain types of pesticide application methods could be used.
8. Restrict the time when certain pesticides could be used based on their toxicity.

Existing law requires school districts to inform parents of children attending school about the pesticides that will be used at the school and notify them when applications will take place.

Existing law also requires each school within one quarter mile of agricultural land under production to create and maintain a school safety plan for the protection of public health.

These requirements serve the purpose of protecting persons at the school from pesticides and providing advanced planning for incidents involving the public health.

Current agricultural use of non-restricted pesticides must be reported within 10 days of the end of the month in which the pesticide was applied. There is no requirement to provide advance notification of the application. In the event of an emergency caused by the drift of a pesticide, significant delays could occur in identifying the material used and impede appropriate responses.

Certain types of pesticide applications and pesticides have greater potential for impacting adjacent properties. The County Agricultural Commissioner does not have the authority to impose conditions on the use of non-restricted pesticides under existing laws and regulations.

The County Superintendent of Schools has requested the County Agricultural Commissioner take action to provide information about pesticide use adjacent to schools and to implement measures providing protection to children attending schools from the most likely sources of pesticide exposure. In order to do so, the San Bernardino County Agricultural Commissioner must adopt local regulations pursuant to the authority granted in Food and Agricultural Code sections 11503 and 11503.5.

IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The CAC has determined that the proposed regulatory action does not impose a mandate on local agencies or school districts nor does it require reimbursement by the State pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code because the regulatory action does not constitute a “new program or higher level of service of an existing program” within the meaning of section 6 of Article XIII of the California Constitution and is not a State regulation or State mandate. The Commissioner has also determined that no nondiscretionary costs or savings to local agencies or school districts will result from the proposed regulatory action.

EFFECT ON HOUSING COSTS

The CAC has made an initial determination that the proposed action will have no effect on housing costs.

SIGNIFICANT ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES

The CAC has made an initial determination that adoption of this regulation will not have a significant adverse economic impact directly affecting businesses, including the ability of San Bernardino County businesses to compete with businesses in other counties.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

The CAC has made an initial determination that the adoption of this regulation will not have a significant cost impact on representative private persons or businesses. The CAC is not aware of any significant cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The CAC believes a representative private person or business will incur the following costs in reasonable compliance with the proposed action:

- Minor increases in labor costs due to times allowed for pesticide applications.

IMPACT ON THE CREATION, ELIMINATION, OR EXPANSION OF JOBS/BUSINESSES

The CAC has determined it is unlikely the proposed regulatory action will impact the creation or elimination of jobs, the creation of new businesses or the elimination of existing businesses, or the expansion of businesses currently doing business within San Bernardino County.

CONSIDERATION OF ALTERNATIVES

The San Bernardino CAC has considered alternatives that would lessen any possible adverse economic impacts, including impacts on small businesses, and has determined that the proposed regulatory action results in the least impact on businesses of all sizes. These alternatives have been incorporated into the exemptions listed in proposed regulations.

The proposed regulatory action is not anticipated to have a significant impact on business since alternatives to prohibited pesticides are available and current application methods will still be allowed; only the timing of the application has changed.

AUTHORITY

This regulatory action is taken pursuant to the authority vested by Food and Agricultural Code sections 11503-11511.

REFERENCE

This regulatory action is to implement, interpret, or make specific Food and Agricultural Code sections 11501 (a) and (b).

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the close of the comment period, the CAC may make the regulation permanent if it remains substantially the same as described in the Informative Digest. If the CAC does make changes to the regulation, the modified text will be made available for at least 15 days prior to adoption. Requests for the modified text should be addressed to the contact person named in this notice. The CAC will accept written comments on any changes for 15 days after the modified text is made available.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The CAC has prepared an Initial Statement of Reasons, and has available the express terms of the proposed action, all of the information upon which the proposal is based, and a rulemaking file. A copy of the Initial Statement of Reasons and the proposed text of the regulation may be obtained from the contact person named in this notice. The information upon which the CAC relied in preparing this proposal and the rulemaking file is available for review at the address specified below.

AGENCY CONTACT

Written comments about the proposed regulatory action; requests for a copy of the Initial Statement of Reasons, the proposed text of the regulation, and a public hearing; and inquiries regarding the rulemaking file may be directed to:

John Gardner, Agricultural Commissioner/Sealer
San Bernardino County Agricultural Commissioner's Office
777 E. Rialto Avenue, San Bernardino, CA 92415-0720
awm@awm.sbcounty.gov

Note: In the event the contact person is unavailable, inquiries should be directed to the following backup contact person at the same address as noted above:

Jim Mitchell, Deputy Agricultural Commissioner/Sealer

This Notice of Intention to Adopt Regulations, the Initial Statement of Reasons, and the proposed text of the regulations are also available on San Bernardino County Agricultural Commissioner's Office Web page at <http://www.sbcounty.gov/awm/>.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Following its preparation, a copy of the Final Statement of Reasons may be obtained from the contact person named above. In addition, the Final Statement of Reasons will be posted on San Bernardino County Agricultural Commissioner's Office Web page and accessed at <http://www.sbcounty.gov/awm/>.

San Bernardino County Agricultural Commissioner's Office

County Agricultural Commissioner

Date